IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10497 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OFF GUJARAT THRO OFFICERGEOLOGIST-2

Versus

KALA UKA JORA

Appearance:

1. Special Civil Application No. 10497 of 2000

Mr. H.C. Patel Addl. G.P. for Petitioner No. 1

MR PM BHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/01/2002

ORAL JUDGEMENT

Heard learned Addl. G.P. Mr. H.C. Patel for the petitioner State and Mr. P.M. Bhatt, the learned advocate for the respondent workman. Pursuant to note

dated 11.1.2002 filed by Mr. P.M.Bhatt, learned advocate for the respondent, the matter has been placed before this Court for orders.

In this petition, rule was issued by this court on 4.10.2000 by making it returnable on 8.11.2000 and interim relief in terms of para 16(C) of the petition has been granted and thus, even the relief under section 17B has also not been granted in favour of the respondent workman and, therefore, the advocate for the respondent has filed the aforesaid note for early hearing of the matter. In the facts and circumstances of the case and also with the consent of the learned advocates for the parties, the matter has been taken up for final hearing today itself.

By way of this petition, the petitioner has challenged the award made by the labour court, Junagadh in Reference (LCJ) No. 84 of 1995 dated 1.5.2000 wherein the labour court concerned has granted reinstatement with continuity of service with 25 % of the back wages for the intervening period with effect from 16th February, 1995.

During the course of hearing, learned Addl. G.P. Mr. H.C. Patel for the petitioner State has submitted that the labour court has committed gross error; the findings recorded by the labour court are contrary to the evidence and the written arguments of the petitioner have not been taken into consideration while making the award. According to his submission, the petitioner is not covered by the definition under section 2(j) of the Industrial Disputes Act, 1947 and, therefore, the provisions of the Industrial Disputes Act, 1947 not applicable. According to his submission, notice under section 80 of the Code of Civil Procedure has not been given to the petitioner and the circular dated 17th October, 1988 is also not applicable to the respondent workman. He has also pointed out that the respondent workman has not completed 240 days' continuous service within one year as required under section 25-B of the Industrial Disputes Act, 1947 because the workman was working as work charge clerk in the office of the petitioner no. 1 on ad.hoc basis in the year 1983 and in the said year, he had worked for 148 days and in the year 1984, for 90 days and in the year 1985, for 92 days. He has also submitted that there was delay in raising the industrial dispute from the date of termination which is more than ten years and, therefore, the labour court ought not to have entertained such belated reference. He has also submitted that the labour court has erred in making award of reinstatement with 25% of the back wages

and, therefore, the award of the labour court is required to be quashed and set aside.

On the other hand, learned advocate Mr. Bhatt appearing for the respondent workman has submitted that the contention as regards 'industry' has not been specifically raised by the petitioner before the labour court and there was fact finding recorded by the labour court on the basis of the evidence produced before the labour court that the respondent workman has completed 240 days' continuous service from 3rd September, 1985 to 13th September, 1986 and thereafter, the labour court has considered the provisions of section 25-F of the Industrial Disputes Act and the labour court has recorded the finding that the provisions of section 25-F have not been complied with and ultimately, in view of such findings of fact recorded by the labour court, the labour court has made ana ward of reinstatement with 25% of the back wages from 16th February, 1995. As regards delay, he has submitted that the labour court has taken care while passing the award as regards back wages and has granted back wages only from 16th February, 1995 and that too at the rate of 25% only and has not granted single pie to the respondent workman towards the back wages for the period prior to 16th February, 1995 and, thus, according to him, entire award is based upon the findings of fact and, therefore, this court should not interfere with such an award and should not disturb such findings of fact in exercise of the powers under Article 226/227 of the Constitution of India. He has also submitted that it is not the case of the petitioner that any jurisdictional error has been committed by the labour court while making the award and, therefore, in view of these facts, the petition is required to be rejected.

I have considered the submissions made by the learned advocates for the parties. Before the labour court, the respondent has deposed at Exh. 21 and his oral evidence before the labour court was cross examined by the Government Pleader and, thereafter, the petitioner has examined one witness at Exh. 29 and both the sides had submitted written arguments before the labour court. Thereafter, the labour court has considered the question as to whether the second party namely respondent is a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 or not. This aspect has been examined by the labour court on the basis of the evidence of the petitioner and relying upon the oral evidence of the petitioner, the labour court has found that this aspect has not been denied by the witness for the petitioner. In view of this and also after perusing the orders of appointment at Exh.1 4 to 17, the labour

court has found that the respondent was working in the office of the petitioner no.1 as work charge clerk and has further recorded the finding that it was not the case of the petitioner before the labour court that the respondent was not a workman of the petitioner and, therefore, in view of these facts, the labour court has held that the respondent was the workman as defined under section 2(s) of the Industrial Disputes Act, 1947. Thereafter, the labour court has examined the another aspect as to whether the respondent has completed 240 days' continuous service under section 25-B of the Industrial Disputes Act, 1947 or not. This aspect has been examined by the labour court on the basis of the statement of claim of the workman and the reply as well as the evidence led before it by the parties. Witness for the petitioner has admitted in his evidence at Exh. 29 before the labour court that the workman has worked with the petitioner from the year 1983 to 1986. Initially, the petitioner had issued three months' orders and, thereafter, 29 days' orders were issued and, thereafter, his service has been terminated on 13th September, 1986. After examining the evidence on record before it, the labour court has come to the conclusion that it is not in dispute between the parties that the workman has completed 12 months' continuous service from 3rd September, 1985 to 13th September, 1986. The labour court has also observed that the petitioner has not produced muster roll before it. Thereafter, the labour court has come to the conclusion that the said termination would amount to retrenchment and the petitioner has not complied with the provisions of section 25-F of the Industrial Disputes Act, 1947. As regards noncompliance of section 25-F of the Industrial Disputes Act, 1947, there is no dispute between the parties. The labour court has also considered that the workman has remained unemployed after his termination and he has not been able to secure any gainful employment. However, while making the award in question, the labour court has taken care about the delay of about nine years in raising such dispute and has granted the back wages only from the period from 16th February, 1995.

Therefore, according to my opinion, the labour court has given cogent and convincing reasons after discussing the evidence on record before it and there are fact findings given by the labour court and also care about the delayed period in raising the dispute as stated above.

In view of such fact findings recorded by the labour court, this court is having very limited powers

for interference in a petition under Article 226 and/or 227 of the Constitution of India. As per the decision of the apex court in case of Indian Overseas Bank versus Indian Overseas Bank Staff Canteen Workers' Union reported in 2000 SCC Lab. & Service, 471, while exercising the powers under Article 226 and/or 227 of the Constitution of India, the High Court cannot reappreciate the findings of fact and it is not having appellate powers. As per the said decision, insufficiency of evidence or that another view is possible is also no ground for interference with the award made by the concerned labour court. As per the decision of the apex court in case of Sugarbhai M. Siddiq and Others versus Ramesh S. Hankare (Dead) by LRs. reported in [2001] 8 SCC page 477, as regards the scope of powers of the High Court under Article 227 of the Constitution of India, the apex court has held that the High Court is concerned not with the decision of the lower court or tribunal but with its decision making process. The apex court has also held that the high court must ascertain whether such court or tribunal had jurisdiction to deal with a particular matter and whether the impugned order is vitiated by procedural irregularity. In the case before hand, learned Addl. G.P. Mr. Patel has not been able to point out that the labour court concerned was not having jurisdiction. He has also not been able to point out that the impugned award is vitiated by any procedural irregularity and, therefore, same is required to be quashed and set aside.

Before this Court, the petitioner has raised the contentions regarding provisions of section 25-B of the Industrial Disputes Act, 1947, circular dated 17th October, 1988, issuance of notice under sec. 80 of the Code of Civil Procedure and delay. However, before the labour Court, such contentions were not raised by the petitioner the labour court has not examined such contentions and has given its findings on the basis of the evidence before it in light of the facts of the present case and, therefore, the petitioner cannot be permitted to raise such contentions before this Court which have not been raised before the labour court and such contentions cannot be entertained by this court.

In view of the aforesaid observations and discussions, according to my opinion, the labour court has committed no jurisdictional irregularity. I am also of the view that the impugned award is not vitiated by any procedural irregularity and, therefore, there is no substance in this petition and the same is required to be dismissed. Petition is accordingly dismissed. Rule is discharged. Interim relief granted earlier shall stand

vacated forthwith. There shall be no order as to costs.

21.1.2002. (H.K. Rathod,J.)

Vyas